HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

WRIT APPEAL No.1711 of 2005

Between:

Indian Scrap Traders …Appellant

AND

Branch Manager, Metal Scrap Trade

Corporation Ltd. & others. …Respondents.

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:: JUDGMENT ::

Counsel for the Appellant : Sri Mir Wajid Ali Kamil

Counsel for Respondent No.1 : Sri K.S.R.Murthy

Counsel for Respondent No.2 : Sri N.V.Raghava Reddy

Counsel for Respondent No.3 : Sri T.V.L. Narasimha Rao

8th FEBRUARY 2006

Per G.S.Singhvi, C.J.

This is an appeal for setting aside order dated 12-9-2005 passed by the learned Single Judge in Writ Petition No.13690 of 2005 whereby he rejected the appellant's prayer for quashing the decision of Branch Manager, Metal Scrap Trade Corporation Limited (respondent No.1) to accept the tender submitted by respondent No.3.

Brief facts:

In response to tender process issued by respondent No.1 vide Tender No.MSTC(V)MOD/04-05/T-137 for purchase of scrap material in Lot No.35 on 'as is where is basis', the appellant, respondent No.3 and others submitted their respective offers. The metal scrap in Lot No.35 consisted of unserviceable items including machinery. The appellant gave bid of Rs.52, 554/- per ton for 20 Metric Tons and at the rate of Rs.11,892/- for the remaining 10 Metric Tons i.e., average Rs.39,000/- per Metric Ton. As against this, respondent No.3 gave bid of Rs.34,077.92p. per Metric Ton. Respondent No.1 rejected the bid of the appellant on the ground that the same had been submitted in violation of Clause 5.2 of the General Terms and Conditions notified as a part of the tender process.

The appellant challenged the rejection of its offer by filing writ petition under Article 226 of the Constitution of India, but could not persuade the learned Single Judge to accept its plea that the decision of the Metal Scrap Trade Corporation Ltd. was un-reasonable, arbitrary and violative of Article 14 of the Constitution. In the opinion of the learned Single Judge, the tender of the appellant was in violation of Clause 3.1 of the Special Conditions and the same was rightly rejected.

While admitting the appeal on 16-9-2005, the Division Bench passed the order of status quo. Thereafter, respondent No.1 filed WAVMP.No.128 of 2006 for vacating the interim order by contending that the stay granted by the Court was detrimental to its interest. By an order dated 27-1-2006, the Court, after hearing learned counsel for respondent No.1 and respondent No.3, vacated interim order dated 16-9-2005. However, that order was recalled on 28-1-2006 on the ground that absence of the learned counsel on 27-1-2006 was not deliberate.

On 31-1-2006, arguments were again heard on the application filed by respondent No.1 for vacating the interim order. During the course of hearing, it was felt that it will be in the interest of all that the appellant and respondent No.3 are directed to give fresh offers in sealed envelopes. Accordingly, they were directed to submit fresh offers in sealed envelopes within 7 days.

In furtherance of the direction by the Court, the appellant and respondent No.3 have given their respective offers in sealed envelopes. The sealed envelopes have been opened in the Court in the presence of the learned counsel for the parties and offers

given by the parties have been shown to them.

A perusal of the offer made by the appellant shows that it has quoted the rate of Rs.39,111/- per Metric Ton for the entire Lot No.35. As against this, respondent No.3 has quoted the rate of Rs.36,000/- per Metric Ton. It is thus clear that not only the original offer made by the appellant was higher than that of respondent No.3, but the fresh offer is also higher by Rs.3,111/- per Metric Ton.

In view of the above, we deem it proper to apply the ratio of the Supreme Court judgment in **Ram and Shyam Co. v. State of Haryana** and direct respondent No.1 to accept the revised offer given by the appellant.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside. As a sequel to this, the writ petition filed by the appellant against rejection of its offer succeeds and a writ in the nature of mandamus is issued to respondent No.1 to accept the revised offer made by it for purchase of Lot No.35 at the rate of Rs.39,111/- per Metric Ton. The necessary paper exercise shall be undertaken by respondent No.1 within a period of two weeks from today. Thereafter, the appellant shall be allowed to lift the unserviceable scrap etc. from Lot No.35. If the appellant fails to complete the paper formalities, or avoids fulfillment of the conditions of contract, then respondent No.1 shall be free to forfeit the earnest money and also take necessary steps for recovery of the losses, if any, suffered by it.

The amount deposited by respondent No.3 shall be refunded to it within a period of two weeks from today.

G.S. SINGHVI, C.J.

8th February, 2006.

G.BHAVANI PRASAD, J.

ARS / svs